

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2006 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

JERAMBHAI D MAKWANA

Versus

DISTRICT PANCHAYAT

Appearance:

MR JS PATEL for Petitioner

MR KG VAKHARIA for Respondent No. 1

Mr.A.J.Desai, LAGP for the State

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 02/11/96

ORAL JUDGEMENT

The petitioner was working as a Medical
Officer, Class II in the Primary Health Centre, Nanna,
Taluka Harij. At the aforesaid place, he happened to be
at 3rd post with effect from 22-9-1980.

2. Some dispute developed between the petitioner and respondent no.2, who was no.1 Medical Officer at the said place and therefore the person responsible to get the pay bills prepared, present it before the treasury and get money for being distributed to the staff members. Accordingly, the petitioner ought to have received salary for the months from October 1980 to August 1982--19 months. As he was not getting any amount the petitioner took the extreme step of going on hunger strike in the month of July 1984. The powers that be took umbrage and as if in a huff, orders came to be issued that for the month of July 1984 he should not be paid salary. He was not to be paid salary even thereafter. However, higher authorities intervened and he started getting salary from August 1984 and onwards. In Annexure H to the petition, a statement pages 17,18 & 19 these details are given. As per that statement, the total outstanding amount against the salary, allowance etc. comes to Rs.26,488.35. To receive this amount, the petition has been filed.

3. It came to be admitted on 11-4-1985. Earlier, notice was issued and in response to it, Sr.Advocate Mr.K.G.Vekharia had appeared for the respondents. He,therefore, waived service of Rule which came to be issued on 11-4-1985. In spite of the fact that Rule was made returnable in the month of September 1985, till today no reply has been filed. The statements made in the petition on oath therefore, go uncontroverted.

4. On earlier occasion when this matter came up before this Court, it was noticed that almost 11 years have passed since admission of the matter and therefore, it will be safe to ascertain whether the amount has been in fact received by the petitioner or not. The petitioner was called by L.A. Mr.J.S.Patel appearing for him. He has informed him that the amount has not been received by him so far. L.A. Mr.Udhwani appearing for Mr.K.G.Vakharia had also tried to obtain information in this regard. He has not been able to receive any information, may be because the matter is very old and therefore, the office may not be having details available on hand.

5. The net result is that the averments made in the petition go uncontroverted. Looking to the averments, it is obvious that the petitioner must succeed and necessary orders must be passed in his favour so that even belatedly he gets his salary.

6. The matter would have rested here. However, looking to the averments made in the petition which have

not been controverted either by respondent no.1 or even by respondent no.2 who, in fact, is the root cause of the trouble of the petitioner, the case of the petitioner against respondent no.2 has to be dealt with separately. Merely allowing the petition would render respondent no.1, as the employer, liable to make the payment and on account of delayed payment, even interest may also be ordered against respondent no.1. However, as totally high handed and unwarranted action on the part of respondent no.2 has led to the situation, so far as interest liability is concerned, it should be fastened on respondent no.2. The authorities have been writing to respondent no.2, as per various annexures to the petition to prepare the bills and see that the petitioner gets salary. But these directions have fallen on deaf years of respondent no.2. If this was his attitude while exercising the authority which, at the relevant time, temporarily he was vested with, it is obvious that he must suffer the consequence.

6. The petition is accordingly allowed. The aforesaid sum of Rs.26,488.35, as detailed in Annexure H, pages 17 to 19 of the petition, shall be paid to the petitioner by the respondents within a period of six weeks from the date of receipt of the writ of the Court. The said amount shall carry interest at the rate of 15% per annum from the date of filing of the petition i.e. 8-3-1985 till the payment is made. It is further directed to respondent no.1 that interest component under this order which is to be paid within six weeks as stated above, shall be recovered by respondent no.1 from respondent no.2 and report thereof shall be made to the Court. It is clarified that the principal amount and the interest shall be paid by respondent no.1 to the petitioner within the aforesaid period and so far as the interest component is concerned, respondent no.1 shall recover the same from respondent no.2 and a report thereof shall be made to the Court, without fail. The petitioner is also awarded cost which is quantified at Rs.2,000/(Two thousand only) which respondent no.1 shall pay to the petitioner within the aforesaid period and respondent no.1, in turn, as in the case of interest, shall recover the same from respondent no.2 and compliance thereof shall, likewise, be reported to the Court. Rule is made absolute.

7. The Registry of this Court is directed to monitor the progress made by respondent no.1 pursuant to the aforesaid directions and shall submit for the perusal of the Court the report received from respondent no.1 as to recovery of interest component and the cost from

respondent no.2.

verified: